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12
13 **UNITED STATES DISTRICT COURT**

14 **SOUTHERN DISTRICT OF CALIFORNIA**

15
16 RICK MUSGRAVE, individually, and on
behalf of himself and all others similarly
17 situated,

18 Plaintiff,

19 v.

20 BUMBLE BEE FOODS LLC,
21 STARKIST COMPANY,
22 TRI-UNION SEAFOODS LLC, and
23 KING OSCAR, INC.

24 Defendants.

Case No. '15CV2012 BAS RBB

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1
2 1. This class action challenges, as *per se* illegal, a conspiracy by the
3 three largest producers of packaged seafood products in the United States –
4 Bumble Bee Foods LLC, StarKist Company, Tri-Union Seafoods LLC, and King
5 Oscar, Inc. (collectively, “Defendants”) to fix, raise, maintain, and/or stabilize
6 prices for packaged seafood products in violation of Sections 1 and 3 of the
7 Sherman Antitrust Act (15 U.S.C. §§ 1, 3) and state antitrust, consumer protection
8 and unfair competition statutes from at least January 1, 2005 to the present (the
9 “Class Period”), and ongoing. As used herein, the term “packaged seafood
10 products” refers to shelf-stable seafood products that are sold in cans, pouches or
11 ready-to-eat serving packages.

JURISDICTION AND VENUE

12 2. Plaintiff brings this action under Section 16 of the Clayton Act, 15
13 U.S.C. § 26, to obtain equitable and injunctive relief for violations of Section 1 of
14 the Sherman Act (15 U.S.C. § 1). The court has subject matter jurisdiction under
15 28 U.S.C. § 1331 for claims that arise under federal law and under 28 U.S.C. §
16 1337 for federal antitrust claims in particular. Plaintiff also asserts claims for
17 damages, to seek restitution, and secure other relief, under state antitrust, unfair
18 competition, consumer protection and unjust enrichment laws.

19 3. The Court additionally has subject matter jurisdiction over these state
20 law claims under 28 U.S.C. § 1367 because those claims are so related to the
21 federal claim that they form part of the same case or controversy.

22 4. This court further has subject matter jurisdiction over the state law
23 claims by virtue of the Class Action Fairness Act of 2005 (“CAFA”), which
24 amended 28 U.S.C. § 1332 to add a new subsection (d) conferring federal
25 jurisdiction over class actions where, “any member of a class of Plaintiff is a
26 citizen of a state different from any Defendant and the aggregated amount in
27 controversy exceeds \$5,000,000, exclusive of interest and costs.” The \$5 million
28 amount-in-controversy and diverse-citizenship requirements of CAFA are satisfied

1 in this case.

2 5. Under 15 U.S.C. §§ 15(a) and 22 and 28 U.S.C. § 1391(b), (c) and (d),
3 this district has venue over the action, for Defendants resided, transacted business,
4 were found, and/or had agents in this District, and this District was the situs of a
5 substantial portion of the affected interstate trade and commerce discussed herein
6 during the Class Period.

7 6. Each Defendant is subject to personal jurisdiction before this Court
8 because, among other reasons, each of them (a) transacted business, (b) sold and/or
9 distributed packaged seafood products, (c) maintained substantial contacts, and/or
10 (d) engaged in an illegal and anticompetitive concerted action with respect to
11 packaged seafood products throughout the United States and in this District. The
12 jointly agreed upon scheme had the intended effect of injuring persons residing in,
13 located in, or doing business throughout the United States, including in the
14 Southern District of California. By artificially producing supracompetitive prices,
15 the scheme restrained trade unreasonably and negatively affected the market for
16 packaged seafood products, harming persons throughout the United States and this
17 District who purchased packaged seafood products for personal use and not for
18 resale, including Plaintiff and members of the Classes.

18 **PLAINTIFF**

19 7. Plaintiff Rick Musgrave is a current resident of the State of California.
20 During the Class Period, Plaintiff indirectly purchased packaged seafood products
21 for his own use and not for resale from one of more of the Defendants and has
22 suffered pecuniary injury as a result of the antitrust violations alleged herein.

23 **DEFENDANTS**

24 8. Defendant Bumble Bee Foods LLC (“Bumble Bee”) is a domestic
25 corporation with its principal place of business located at 280 10th Avenue, San
26 Diego, CA 92101. Bumble Bee produces and sells packaged seafood products
27 throughout the United States (including this District), its territories and the District
28 of Columbia. Bumble Bee is privately owned by Lion Capital (“Lion”), based in

1 the United Kingdom.

2 9. Defendant StarKist Company (“StarKist”) is a domestic corporation
3 with its headquarters at 225 North Shore Drive, Suite 400, Pittsburgh, PA 15212.
4 StarKist produces and sells packaged seafood products throughout the United
5 States (including this District), its territories and the District of Columbia. StarKist
6 is privately owned by Dongwon Enterprise (“Dongwon”), based in South Korea.

7 10. Defendant Tri-Union Seafoods LLC is a domestic corporation with its
8 principal place of business located at 9330 Scranton Road, Suite 500, San Diego,
9 CA 92121. Tri-Union Seafoods LLC produces and sells packaged seafood
10 products throughout the United States (including this District), its territories and
11 the District of Columbia, and markets these products under the brand name
12 Chicken of the Sea. Unless otherwise indicated, Tri-Union Foods LLC will be
13 referred to herein as “Chicken of the Sea.”

14 11. Defendant King Oscar, Inc. (“King Oscar”) is a domestic corporation
15 with its principal place of business at 3838 Camino Del Rio North, Suite 115, San
16 Diego, CA 92108. King Oscar produces and sells packaged seafood products
17 throughout the United States (including this District), its territories and the District
18 of Columbia.

19 12. Defendants Chicken of the Sea and King Oscar (together, “Tri-
20 Union”) are wholly owned by Thai Union Frozen Products, a public company
21 headquartered in Thailand.

22 **UNNAMED CO-CONSPIRATORS**

23 13. Various other persons, firms, and corporations, the identities of which
24 are presently unknown, have participated as co-conspirators with Defendants in the
25 violations alleged herein and have performed acts and made statements in
26 furtherance thereof.

27 **AGENTS**

28 14. The acts charged in this Complaint have been done by Defendants and
their co-conspirators, or were authorized, ordered or done by their respective

1 officers, agents, employees or representatives while actively engaged in the
2 management of each Defendant's business or affairs.

3 15. Each of the Defendants named herein acted as the agent or joint
4 venturer of or for the other Defendants with respect to the acts, violations and
5 common course of conduct alleged herein.

6 **INTERSTATE TRADE AND COMMERCE**

7 16. The activities of Defendants, as described in this Complaint, were
8 within the flow of, and substantially affected, interstate commerce and had a direct,
9 substantial and reasonably foreseeable effect upon commerce in the United States,
10 its territories and the District of Columbia. Throughout the Class Period, there was
11 a continuous and uninterrupted flow of invoices for payment, payments, and other
12 documents essential to the sale of packaged seafood products in interstate
13 commerce between and among offices of Defendants and their customers located
14 throughout the United States, its territories and the District of Columbia.

15 17. Throughout the Class Period, Defendants transported substantial
16 amounts of packaged seafood products in a continuous and uninterrupted flow of
17 interstate commerce throughout the United States, its territories and the District of
18 Columbia.

18 **FACTUAL ALLEGATIONS**

19 **A. Overview of the Packaged Seafood Product Industry.**

20 18. Packaged seafood products are pre-cooked, shelf-stable seafood sold
21 primarily in cans or pouches.

22 19. The process for creating packaged seafood products begins when raw
23 seafood is delivered to canneries, who then cook and package the seafood in
24 hermetically sealed containers. They typically have a shelf life of one to five
25 years.

26 20. Each package is affixed with a permanent production code identifying
27 plant, product, date packed, batch, and other information.

28 21. Packaged seafood products are sold to club warehouses, retail

1 groceries, grocery cooperatives, mass merchandisers, and drug stores, among
2 others.

3 22. Mintel Group Ltd., a Chicago-based market research firm, reports that
4 total sales of shelf-stable seafood products in the United States in 2014 was
5 approximately \$2.5 billion.

6 23. Defendants are the three largest domestic manufacturers of packaged
7 seafood products, which is a highly concentrated industry. In June 2013, the
8 Bangkok Post reported that Chicken of the Sea's market share in the US shelf-
9 stable seafood market was 18.7%, while Bumble Bee had 26% and StarKist had
10 26%. In July of 2014, Youssef Abboud, an analyst covering with UBS, estimated
11 Starkist's share of the US canned tuna market at 36%, Bumble Bee's at 25% and
12 Chicken of the Sea's at 20%. The remainder of the market primarily consists of
13 "private label," i.e. "store brand" products.

14 24. This oligopolistic structure within the industry is the result of recent
15 mergers and acquisitions. For example, in 1997, Van Camp Seafood Company
16 ("Van Camp") was acquired by the investment group Tri-Union Seafoods LLC, of
17 which Thai Union Frozen Products was a member. Thereafter, Thai Union Frozen
18 Products bought out the other investors to acquire Van Camp completely, which it
19 renamed Chicken of the Sea International, an entity that was later merged into Tri-
20 Union Seafoods LLC. In 2008, Dongwon acquired StarKist from Del Monte
21 Foods for \$363 million. Similarly, in 2014, Thai Union Frozen Products bought
22 King Oscar, a Norwegian sardine canner that sold 37% of its products in the
23 United States. And in December of 2014, Thai Union Frozen Products announced
24 the acquisition from Lion (subject to regulatory approval) of Bumble Bee for \$1.51
25 billion. The combination of Chicken of the Sea and Bumble Bee would have
26 created a virtual duopoly, with the combined entity substantially exceeding the
27 market share of StarKist.

28 **B. The Department of Justice Investigation.**

25. The antitrust division of the United States Department of Justice

1 (“DOJ”) is investigating anticompetitive practices in the United States packaged
2 seafood products industry, and DOJ has convened a grand jury. Two of the three
3 largest United States packaged seafood product manufacturers, Tri-Union and
4 Bumble Bee, have publicly confirmed receipt of grand jury subpoenas.

5 26. On July 23, 2015, while announcing it had suspended a preferential
6 public offering, Thai Union Frozen Products disclosed that both Bumble Bee and
7 Chicken of the Sea had received grand jury subpoenas relating to an antitrust
8 investigation of packaged seafood products. Thai Union chairman Kraisor
9 Chansiri reportedly confirmed the DOJ investigation in a letter to the Bangkok
10 stock exchange, and stated Tri-Union Seafoods had received a subpoena “requiring
11 Tri-Union to provide relevant information to the DOJ in relation to an antitrust
12 investigation of the packaged seafood industry in the United States.” The
13 publication Undercurrent News further reported in an article dated that same day
14 that “Thai Union held a conference with analysts on the suspension of the share
15 offer, in which the company’s management said other US seafood producers have
16 also received a subpoena requiring the production of relevant information to the
17 DOJ.”

18 27. The publication Global Competition Review stated that:

19 An industry expert said the subpoena does not appear to be limited to the
20 merger review, and early information indicates the demand for information
21 came from a separate section of the antitrust division, not one tasked with
22 analyzing deals.

23 It is highly likely that something produced in the merger investigation
24 sparked this investigation touching the industry as a whole rather than just
25 the parties to the deal, he said.

26 *****

27 The source said others in the industry are now anticipating that they too will
28 be subpoenaed....

28 28. These statements plausibly suggest that StarKist received a subpoena

1 as well and that the DOJ's investigation extends to the entire domestic packaged
2 seafood products sector.

3 29. It is significant that these companies received subpoenas from a
4 federal grand jury, as is reflected in Chapter 3 of the 2014 edition of the DOJ's
5 Antitrust Division Manual, available at
6 <http://www.justice.gov/atr/public/divisionmanual/chapter3.pdf>. Section F.1 of that
7 chapter notes that "staff should consider carefully the likelihood that, if a grand
8 jury investigation developed evidence confirming the alleged anticompetitive
9 conduct, the Division would proceed with a criminal prosecution." *Id.* at III-82.
10 The staff request needs to be approved by the relevant field chief and is then sent
11 to the Antitrust Criminal Enforcement Division." *Id.* "The DAAG [Deputy
12 Assistant Attorney General] for Operations, the Criminal DAAG, and the Director
13 of Criminal Enforcement will make a recommendation to the Assistant Attorney
14 General. If approved by the Assistant Attorney General, letters of authority are
15 issued for all attorneys who will participate in the grand jury investigation." *Id.* at
16 III-83. "The investigation should be conducted by a grand jury in a judicial district
17 where venue lies for the offense, such as a district from or to which price-fixed
18 sales were made or where conspiratorial communications occurred." *Id.*

19 **C. The Structure and Characteristics of the Packaged Seafood**
20 **Product Market Render the Conspiracy Plausible**

21 30. The structure and characteristics of the Packaged Seafood market in
22 the United States are conducive to a price-fixing agreement.

23 **a. Packaged Seafood Products are Commodity Products**

24 31. Packaged seafood products are commodity products that do not differ
25 significantly from one manufacturer to the next, and consumers can easily
26 substitute one manufacturers' products for another. The various varieties have
27 similar shelf life, contain similar amounts of seafood, and are marketed in cans,
28 pouches, and cups. Therefore, purchasers of packaged seafood products are more
likely to be influenced by price when making a purchasing decision, creating

1 downward pressure on price as manufacturers compete to maintain market share.
2 Such markets create substantial incentives to form a cartel.

3 **b. There Exist Significant Barriers to Entry in the Packaged**
4 **Seafood Products Market**

5 32. Under basic economic principles, cartels that raise prices to supra-
6 competitive levels would, in the ordinary course, attract new entrants in search of
7 the supra-competitive profits that result from supra-competitive prices. Left
8 unchecked, that process would result in steadily increasing supply exerting
9 downward pressure on prices, ultimately driving them back to competitive levels.
10 Where high barriers to entry exist, however, new entrants are less likely to enter
11 the market or are dissuaded from entering it altogether. Thus, barriers to entry
12 facilitate the formation and maintenance of cartels.

13 33. There are substantial barriers that preclude, or reduce, entry into the
14 packaged seafood product market, including high start-up costs, manufacturing
15 expertise, access to raw materials, and access to distribution channels. Therefore,
16 Defendants could collectively raise prices without fear of being undercut by new
17 entrants.

18 **c. The Packaged Seafood Product Market is Highly**
19 **Concentrated**

20 34. Basic industrial organization economics teaches that higher levels of
21 concentration foster the formation and operation of cartels by reducing the number
22 of firms needed to agree to fix prices and which must be monitored to maintain a
23 cartel. Purchasers routinely source their packaged seafood products from one of
24 the three Defendants and, as described above, Defendants dominate the United
25 States packaged seafood products market.

26 35. Defendants possessed significant market power to raise prices for
27 packaged seafood products above competitive levels in the United States.

28 **d. No Economically Reasonable Alternatives**

36. There are no economically reasonable substitutes for packaged

1 seafood products. Alternative seafood, such as frozen seafood or fresh seafood, do
 2 not have commensurate shelf lives and require preparation, such as cooking, before
 3 they can be consumed.

4 **e. Economic Indications Suggest Collusive Pricing Within**
 5 **The Domestic Packaged Seafood Products Industry.**

6 37. Consumption of packaged seafood products, particularly canned tuna,
 7 has declined over the last ten years in the United States. The annual consumption
 8 per person was 3.1 lbs. in 2005, but had fallen to 2.3 lbs. in 2013. However, the
 9 average price per carton of canned tuna has increased from just over \$15 to
 10 roughly \$40 in the same period.

11 38. Raw material costs do not adequately explain these price increases.
 12 While the cost per metric ton of skipjack tuna rose in 2012 and early 2013, it
 13 declined precipitously thereafter. According to the April 19, 2015 issue of Tuna
 14 Market Intelligence, “[a]s recently as June last year, skipjack was selling at
 15 US\$1,800 in Bangkok. But the price has since plummeted to US\$1,000 since the
 16 beginning of the year, with industry officials anticipating further reductions in
 17 price this year.” Tuna exporters in Ecuador noted in January of 2015 that the price
 18 per metric ton had declined from \$1,400 to \$800. And the United Nations Food &
 19 Agriculture Organization noted in its May 2015 “Food Outlook” biannual report
 20 that tuna prices had dropped considerably in 2014: “tuna prices declined
 21 significantly due to excess supply, with frozen skipjack prices hitting a 6-year
 22 low.” Despite these drastically declining raw material costs, Defendants did not
 23 decrease prices and try to obtain more market share.

24 39. Thai Union Frozen Products’ Annual Reports discuss this situation.
 25 In its 2013 Annual Report, Thai Union Frozen Products stated that “our branded
 26 tuna business showed resilient growth from 2012 thanks to the price adjustments in
 27 Europe *and more rational market competition in the US.*” (Emphasis added). It
 28 stated in the same report that its future profit margins would depend upon
 “[r]easonable US canned tuna competition without unnecessary price.” (Emphasis

1 added). In its 2014 Annual Report, Thai Union Frozen Products explicitly noted
2 that this goal had been achieved. It stated:

3 Thanks to *reduced price competition* (absence of cut throat pricing) and
4 generally lower fish Chicken of the Sea, our own tuna brands marked a great
5 year of increased profitability. Despite minimal sales growth in the US,
6 competitive inventory cost and reasonable market conditions helped lift the
7 margin of our US brand. (Emphases added).

8 40. The same report went on to note that “*sensible market competition*,
9 supported by lower raw material costs, made it possible for our own tuna brands to
10 expand their margins through the year despite limited volume growth.” (Emphasis
11 added). It indicated that future revenue growth would again be dependent upon
12 “[r]easonable US canned tuna market competition that focuses more on
13 consumption creation than market share alone.” (Emphasis added). The
14 “reasonable market conditions,” “more rational market competition,” “sensible
15 market competition,” avoidance of battles for market share and “absence of cut
16 throat pricing” that the reports note could only have come about through collusion.
17 It would have been against the individual self-interest of each Defendant to eschew
18 increasing market share during this period by lowering prices.

18 **f. Opportunities to Collude**

19 41. There were numerous business opportunities for Defendants to meet
20 and engage in such collusion. One such opportunity is provided by the Tuna
21 Council. As explained on that organization’s website:

22 The National Fisheries Institute’s Tuna Council represents the largest
23 processors and household names for canned and pouch tuna in the U.S.
24 including Bumble Bee®, Chicken of the Sea® and StarKist®. The Tuna
25 Council speaks for the tuna industry on numerous issues including food
26 safety, labeling, sustainability, nutrition education and product marketing.

27 42. An example of such joint conduct is provided by the “Tuna the
28 Wonderfish” advertising campaign of 2011-12. This campaign was bankrolled by

the Defendants and carried out under the auspices of the Tuna Council with the support of Thai processors. In it, the Defendants teamed up for marketing purposes. Joe Tuza, Senior Vice-President of Marketing for StarKist, reportedly said that “[w]e worked together surprisingly well.” He said further that the campaign, intended to increase consumption of tuna, was based on the hope that “as the water level rises...all boats rise with the tide,” referring to the three Defendant companies. The same philosophy appears to undergird the alleged price-fixing conspiracy.

43. Another opportunity to collude was provided through bilateral copacking agreements between Bumble Bee and Chicken of the Sea. Bumble Bee copacks for Chicken of the Sea at the former’s plant located in Santa Fe Springs, California with respect to West Coast sales. Chicken of the Sea does the same for Bumble Bee at the former’s plant in Georgia with respect to East Coast sales. Thus, even before the proposed merger, these two companies were cooperating closely. These interlocking relationships provided an excellent opportunity to collude on pricing.

D. Plaintiff Suffered Antitrust Injury.

44. Defendants’ conspiracy had the following effects, among others:

- a. Price competition has been restrained or eliminated with respect to packaged seafood products; and
- b. The prices of packaged seafood products have been fixed, raised, maintained, or stabilized at artificially inflated levels; and
- c. Indirect purchasers of packaged seafood products have been deprived of the benefits of free and open competition.

45. During the class period, Defendants charged supra-competitive prices for packaged seafood products sold to Plaintiff. By reason of Defendants’ alleged violations of the antitrust laws, Plaintiff and the Classes have sustained injury, having paid higher prices for packaged seafood products than they would have paid absent Defendants’ alleged illegal contract, combination or conspiracy, and,

1 as a result, have suffered damages in an amount to be determined. This is an
2 antitrust injury of the type the antitrust laws were meant to punish and prevent.

3 46. Packaged seafood products are identifiable, discrete products that
4 remain unchanged from the point at which they are sold by Defendants until they
5 reach Plaintiff and the Classes. Packaged seafood products follow a traceable
6 physical chain of distribution from Defendants to Plaintiff and the members of the
7 Classes, and price and cost changes attributable to Defendants' price-fixing
8 conspiracy can be traced through the chain of distribution to Plaintiff and the
9 members of the Classes.

10 47. Just as packaged seafood products can be physically traced through
11 the supply chain, so can their price be traced to show that changes in the prices
12 paid by direct purchasers of packaged seafood products affect prices paid by the
13 indirect purchasers of packaged seafood products in the chain of distribution.

14 48. The economic necessity of passing through cost changes increases
15 with the degree of competition a firm faces. The wholesale, distributor, club
16 warehouse, retail grocery, grocery cooperative, mass merchandiser and drug store
17 market for packaged seafood products are subject to vigorous price competition.
18 The aforementioned market participants have thin net margins, and are therefore at
19 the mercy of their product costs, such that increases in the price of packaged
20 seafood products lead to corresponding increases in prices to their customers.
21 When downstream distribution markets are highly competitive, as they are in the
22 case of packaged seafood products, overcharges are passed through to ultimate
23 consumers, such as the indirect-purchaser Plaintiff and members of the Classes.

24 49. Hence the inflated prices of packaged seafood products resulting from
25 Defendants' price-fixing conspiracy have been passed on to Plaintiff and the other
26 members of the Classes by wholesalers, distributors and retailers.

27 50. Two antitrust scholars – Professors Robert G. Harris (Professor
28 Emeritus and former Chair of the Business and Public Policy Group at the Haas
School of Business at the University of California at Berkeley) and the late

1 Lawrence A. Sullivan (Professor of Law Emeritus at Southwestern Law School
 2 and author of the Handbook of the Law of Antitrust) – have observed that “in a
 3 multiple level chain of distribution, passing on monopoly overcharges is not the
 4 exception: it is the rule.” Robert G. Harris & Lawrence A. Sullivan, Passing on the
 5 Monopoly Overcharge: A Comprehensive Policy Analysis, 128 U. PA. L. REV.
 6 268, 275 (1979).

7 51. As Professor Jeffrey K. MacKie-Mason (Arthur W. Burks Professor
 8 for Information and Computer Science and Professor of Economics and Public
 9 Policy at the University of Michigan), an expert who presented evidence in a
 10 number of the indirect purchaser cases involving Microsoft Corporation, said (in a
 11 passage quoted in the judicial decision in that case granting class certification):

12 As is well known in economic theory and practice, at least some of the
 13 overcharge will be passed on by distributors to end consumers. When the
 14 distribution markets are highly competitive, as they are here, all or nearly the
 15 entire overcharge will be passed on through to ultimate consumers... Both
 16 of Microsoft’s experts also agree upon the economic phenomenon of cost
 17 pass through, and how it works in competitive markets. This general
 18 phenomenon of cost pass through is well established in antitrust laws and
 economics as well.

19 Order re: Class Certification at 13-14, Coordination Proceedings Special Title
 20 (Rule 1550(b)) Microsoft I-V Cases, No. J.C.C.P. No. 4106 (Cal. Sup. Ct. Aug. 29,
 21 2000).

22 52. Economists have developed techniques to isolate and understand the
 23 relationship between one “explanatory” variable and a “dependent” variable in
 24 those cases when changes in the dependent variable are explained by changes in a
 25 multitude of variables, even when all such variables may be changing
 26 simultaneously. That analysis – called regression analysis – is commonly used in
 27 the real world and in litigation to determine the impact of an upstream price
 28 increase on product prices down the chain of distribution.

1 53. Defendants' overcharges impacting the prices of packaged seafood
2 products through the chain of their distribution can be measured and quantified.
3 Commonly used and well accepted economic models can be used to measure both
4 the existence and the amount of the supra-competitive charge passed through the
5 chain of distribution. Thus, the economic harm to Plaintiff and the members of the
6 Classes can be quantified.

7 **F. The Statute of Limitations Did Not Begin to Run Because Plaintiff**
8 **Did Not and Could Not Discover His Claims.**

9 54. Plaintiff and the members of the Classes had no knowledge of the
10 combination or conspiracy alleged herein, or of facts sufficient to place them on
11 inquiry notice of the claims set forth herein, until shortly before this litigation
12 commenced.

13 55. Plaintiff and the members of the Classes are consumers who
14 purchased packaged seafood products. They had no direct contact or interaction
15 with the Defendants and had no means from which they could have discovered the
16 combination and conspiracy described in this Complaint prior to shortly before this
17 litigation was commenced.

18 56. No information in the public domain was available to Plaintiff and the
19 members of the Classes prior to public disclosure of the DOJ's investigation of the
20 packaged seafood product industry, which only recently revealed sufficient
21 information to suggest that the Defendants were involved in a conspiracy to fix
22 prices for packaged seafood products. Plaintiff and the members of the Classes
23 had no means of obtaining any facts or information concerning any aspect of
24 Defendants' dealings with direct purchasers of such products, much less the fact
25 that they and their co-conspirators had engaged in the combination and conspiracy
26 alleged herein.

27 57. For these reasons, the statute of limitations as to Plaintiff's and the
28 Classes' claims did not begin to run, and has been tolled with respect to the claims
that Plaintiff and members of the Classes have alleged in this Complaint.

G. Defendants' Fraudulent Concealment Tolled the Statute of Limitations.

58. Throughout the relevant period, Defendants affirmatively and fraudulently concealed their unlawful conduct against Plaintiff and the Classes.

59. Plaintiff and members of the Classes did not discover, and could not discover through the exercise of reasonable diligence, that Defendants were violating the law as alleged herein until shortly before this litigation was commenced. Nor could Plaintiff and the Class members have discovered the violations earlier than that time because Defendants conducted their conspiracy in secret, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection. In addition, the conspiracy was by its nature self-concealing.

60. Defendants engaged in a successful, illegal price-fixing conspiracy with respect to packaged seafood products, which they affirmatively concealed, in at least the following respects:

a. By agreeing among themselves not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme, and by agreeing to expel those who failed to do so; and

b. By agreeing on other means to avoid detection of their illegal conspiracy to fix the prices of packaged seafood products.

61. As a result of Defendants' fraudulent concealment of their conspiracy, Plaintiff and the Classes assert the tolling of any applicable statute of limitations affecting the rights of action of Plaintiff and members of the Classes.

CLASS ACTION ALLEGATIONS

62. Plaintiff brings this action on his own behalf and as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure seeking equitable and injunctive relief on behalf of the following Class (the "Nationwide

Class”):

All individuals and entities that indirectly purchased packaged seafood products for their own use and not for resale within the United States, its territories and the District of Columbia from any Defendant or any predecessor, subsidiary or affiliate thereof, at any time between January 1, 2005 and the present. Excluded from the class are governmental entities, Defendants, any parent, subsidiary or affiliate thereof, and Defendants’ officers, directors, employees, and immediate families.

63. Plaintiff also brings this action on behalf of himself and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to state antitrust, unfair competition, and consumer protection laws as well as common law unjust enrichment on behalf of the following classes (the “Damages Classes”):

All individuals and entities that indirectly purchased packaged seafood products for their own use and not for resale in the Indirect Purchaser States¹ from any Defendant or any predecessor, subsidiary or affiliate thereof, at any time between January 1, 2005 and the present. Excluded from the class are governmental entities, Defendants, any parent, subsidiary or affiliate thereof, and Defendants’ officers, directors, employees, and immediate families.

64. The Nationwide Class and the Damages Classes are referred to herein as the “Classes.”

65. Due to the nature of the trade and commerce involved, Plaintiff believes that Class members are sufficiently numerous and geographically dispersed throughout the United States, its territories and the District of Columbia so that joinder of all Class members is impracticable.

66. The Indirect Purchaser States are the states listed in Counts II and III,

¹ The Indirect Purchaser States are the states listed in Counts II and III, and each state class comprises individuals and entities that have made indirect purchases of Defendants’ packaged seafood products in the state.

1 and each state class comprises individuals and entities that have made indirect
2 purchases of Defendants' packaged seafood products in the state.

3 67. There are questions of law and fact which are common to the claims
4 of Plaintiff and the Classes, including, but not limited to:

5 a. Whether Defendants engaged in a combination or conspiracy
6 with their co-conspirators to fix, raise, maintain, and/or stabilize the prices
7 for packaged seafood products;

8 b. Whether the purpose and/or effect of the acts and omissions
9 alleged herein was to restrain trade, or to affect, fix, control, and/or maintain
10 the prices for packaged seafood products;

11 c. The existence and duration of the horizontal agreements alleged
12 herein to fix, raise, maintain, and/or stabilize the prices for packaged seafood
13 products;

14 d. Whether Defendants violated Sections 1 and 3 of the Sherman
15 Act (15 §§ 1, 3);

16 e. Whether Defendants' agents, officers, employees, or
17 representatives participated in correspondence and meetings in furtherance of
18 the illegal conspiracy alleged herein, and, if so, whether such agents, officers,
19 employees, or representatives were acting within the scope of their authority
20 and in furtherance of Defendants' business interests;

21 f. Whether, and to what extent, the conduct of Defendants caused
22 injury to Plaintiff and members of the Classes, and, if so, the appropriate
23 measure of damages; and

24 g. Whether Plaintiff and members of the Classes are entitled to
25 injunctive relief to prevent the continuation or furtherance of the violation of
26 Sections 1 and 3 of the Sherman Act.

27 68. Plaintiff's claims are typical of the claims of the members of the
28 Classes.

1 75. Defendants and their co-conspirators engaged in a continuing
2 contract, combination, and conspiracy to artificially fix, raise, maintain, and/or
3 stabilize the prices of packaged seafood products within the United States, its
4 territories, and the District of Columbia in violation of Sections 1 and 3 of the
5 Sherman Act (15 U.S.C. §§ 1, 3).

6 76. Defendants and their co-conspirators agreed to, and did in fact,
7 restrain trade or commerce by fixing, raising, maintaining, and/or stabilizing at
8 artificial and non-competitive levels, the prices of such packaged seafood products.

9 77. In formulating and effectuating their contract, combination or
10 conspiracy, Defendants and their co-conspirators engaged in anticompetitive
11 activities, the purpose and effect of which were to artificially fix, raise, maintain
12 and/or stabilize the price of packaged seafood products.

13 78. The illegal combination and conspiracy alleged herein had the
14 following effects, among others:

15 a. The prices charged by Defendants to, and paid by, Plaintiff and
16 members of the Classes for packaged seafood products were fixed, raised,
17 maintained and/or stabilized at artificially high and non-competitive levels;

18 b. Plaintiff and members of the Classes have been deprived of free
19 and open competition in the purchase of packaged seafood products;

20 c. Plaintiff and members of the Classes have been required to pay
21 more for packaged seafood products than they would have paid in a
22 competitive marketplace absent Defendants' price-fixing conspiracy;

23 d. Competition in the sale of packaged seafood products has been
24 restrained, suppressed or eliminated.

25 79. As a direct and proximate result of Defendants' conduct, Plaintiff and
26 members of the Classes have been injured and damaged in their business and
27 property in an amount to be determined according to proof.

28 80. These violations are continuing and will continue unless enjoined by
this Court.

82. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

Violation of State Antitrust Statutes

82. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which packaged seafood products were sold, distributed or obtained in Arizona.

c. During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce.

e. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Ariz. Rev. Stat. §§44-1401, *et seq.* 4 Accordingly, Arizona Purchasers seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

84. In compliance with Arizona's Antitrust Act, Ariz. Rev. Stat. § 44-1415, Plaintiff will mail a copy of this Complaint to the Arizona Attorney General

1 contemporaneously with its filing.

2 85. Plaintiff further alleges as follows:

3 a. Beginning at a time presently unknown to Plaintiff, but at least
4 as early as January 1, 2005, and continuing thereafter to the present,
5 Defendants and their co-conspirators entered into and engaged in a
6 continuing unlawful trust in restraint of the trade and commerce described
7 above in violation of Section 16720, California Business and Professional
8 Code. Defendants, and each of them, have acted in violation of Section
9 16720 to fix, raise, stabilize and maintain prices of packaged seafood
10 products at supra-competitive levels.

11 b. The aforesaid violations of Section 16720, California Business
12 and Professions Code, consisted, without limitation, of a continuing
13 unlawful trust and concert of action among the Defendants and their co-
14 conspirators, the substantial terms of which were to fix, raise, maintain and
15 stabilize the prices of, and to allocate markets for packaged seafood
16 products.

17 c. For the purpose of forming and effectuating the unlawful trust,
18 the Defendants and their co-conspirators have done those things which they
19 combined and conspired to do, including but in no way limited to the acts,
20 practices, and course of conduct set forth above and the following: (1)
21 fixing, raising, stabilizing and/or maintaining the price of packaged seafood
22 products; and (2) allocating among themselves the production of packaged
23 seafood products.

24 d. The combination and conspiracy alleged herein has had, inter
25 alia, the following effects: (1) price competition in the sale of packaged
26 seafood products has been restrained, suppressed and/or eliminated in the
27 State of California; (2) prices for packaged seafood products sold by
28 Defendants and their co-conspirators have been fixed, raised, maintained and
stabilized at artificially high, non-competitive levels in the State of

1 California; and (3) those who purchased packaged seafood products directly
2 or indirectly from Defendants and their co-conspirators have been deprived
3 of the benefit of free and open competition.

4 e. As a direct and proximate result of Defendants' unlawful
5 conduct, Plaintiff and California Purchasers have been injured in their
6 business and property in that they paid more for packaged seafood products
7 than they otherwise would have paid in the absence of Defendants' unlawful
8 conduct. As a result of Defendants' violation of Section 16720 *et seq.* of the
9 California Business and Professions Code, Plaintiff and the California
10 Purchasers seek treble damages and the costs of suit, including reasonable
11 attorneys' fees, pursuant to Section 16750(a) of the California Business and
12 Professions Code.

13 86. Plaintiff further alleges as follows:

14 a. Defendants agreed to, and did in fact, act in restraint of trade or
15 commerce by affecting, fixing, controlling and/or maintaining, at artificial
16 and/or non-competitive levels, the prices at which packaged seafood products
17 were sold, distributed or obtained in the District of Columbia.

18 b. Defendants' combinations or conspiracies had the following
19 effects: (1) packaged seafood product price competition was restrained,
20 suppressed, and eliminated throughout the District of Columbia; (2) packaged
21 seafood product prices were raised, fixed, maintained, and stabilized at
22 artificially high levels throughout the District of Columbia; (3) District of
23 Columbia Purchasers paid supracompetitive, artificially inflated prices for
24 packaged seafood products.

25 c. During the Class Period, Defendants' illegal conduct
26 substantially affected District of Columbia commerce.

27 d. By reason of the foregoing, Defendants have entered into
28 agreements in restraint of trade in violation of Hawaii Code, H.R.S. § 480-4.5
Accordingly, Hawaii purchasers seek all forms of relief available under

1 Hawaii Code, H.R.S. § 480-1 *et seq.*

2 87. In compliance with Hawaii Rev. Stat. § 480-13.3, Plaintiff will mail a
3 copy of this Complaint to the Hawaii Attorney General contemporaneously with its
4 filing.

5 88. Plaintiff further alleges as follows:

6 a. Defendants agreed to, and did in fact, act in restraint of trade or
7 commerce by affecting, fixing, controlling and/or maintaining, at artificial
8 and/or non-competitive levels, the prices at which packaged seafood
9 products were sold, distributed or obtained in Iowa.

10 b. Defendants' combinations or conspiracies had the following
11 effects: (1) packaged seafood product price competition was restrained,
12 suppressed, and eliminated throughout the Iowa; (2) packaged seafood
13 product prices were raised, fixed, maintained, and stabilized at artificially
14 high levels throughout the Iowa; (3) Iowa Purchasers paid supracompetitive,
15 artificially inflated prices for packaged seafood products.

16 c. During the Class Period, Defendants' illegal conduct
17 substantially affected Iowa commerce.

18 d. As a direct and proximate result of Defendants' unlawful
19 conduct, Iowa Purchasers have been injured in their business and property
20 and are threatened with further injury.

21 e. By reason of the foregoing, Defendants have entered into
22 agreements in restraint of trade in violation of Iowa Code §§ 553.1 *et seq.*
23 Accordingly, Iowa Purchasers seek all forms of relief available under Iowa
24 Code §§ 553.1.

25 89. Plaintiff further alleges as follows:

26 a. Defendants agreed to, and did in fact, act in restraint of trade or
27 commerce by affecting, fixing, controlling and/or maintaining, at artificial
28 and/or non-competitive levels, the prices at which packaged seafood
products were sold, distributed or obtained in Kansas.

1 b. Defendants' combinations or conspiracies had the following
2 effects: (1) packaged seafood product price competition was restrained,
3 suppressed, and eliminated throughout Kansas; (2) packaged seafood
4 product prices were raised, fixed, maintained, and stabilized at artificially
5 high levels throughout Kansas; (3) Kansas Purchasers paid
6 supracompetitive, artificially inflated prices for packaged seafood products.

7 c. During the Class Period, Defendants' illegal conduct
8 substantially affected Kansas commerce.

9 d. As a direct and proximate result of Defendants' unlawful
10 conduct, Kansas Purchasers have been injured in their business and property
11 and are threatened with further injury.

12 e. By reason of the foregoing, Defendants have entered into
13 agreements in restraint of trade in violation of Kansas Stat. Ann. §§50-101 *et*
14 *seq.* Accordingly, Kansas Purchasers seek all forms of relief available under
15 Kansas Stat. Ann. §§50-101 *et seq.*

16 90. Plaintiff further alleges as follows:

17 a. Defendants agreed to, and did in fact, act in restraint of trade or
18 commerce by affecting, fixing, controlling and/or maintaining, at artificial
19 and/or non-competitive levels, the prices at which packaged seafood products
20 were sold, distributed or obtained in Maine.

21 b. Defendants' combinations or conspiracies had the following
22 effects: (1) packaged seafood product price competition was restrained,
23 suppressed, and eliminated throughout Maine; (2) packaged seafood product
24 prices were raised, fixed, maintained, and stabilized at artificially high levels
25 throughout Maine; (3) Maine Purchasers paid supracompetitive, artificially
26 inflated prices for packaged seafood products.

27 c. During the Class Period, Defendants' illegal conduct
28 substantially affected Maine commerce.

 d. As a direct and proximate result of Defendants' unlawful

1 conduct, members of the Maine Purchasers have been injured in their
2 business and property and are threatened with further injury.

3 e. By reason of the foregoing, Defendants have entered into
4 agreements in restraint of trade in violation of Maine Rev. Stat. Ann. 10,
5 §§1101 *et seq.* Accordingly, Maine purchasers seek all forms of relief
6 available under Maine Rev. Stat. Ann. 10, §§1101 *et seq.*

7 91. Plaintiff further alleges as follows:

8 a. Defendants agreed to, and did in fact, act in restraint of trade or
9 commerce by affecting, fixing, controlling and/or maintaining, at artificial
10 and/or non-competitive levels, the prices at which packaged seafood
11 products were sold, distributed or obtained in Michigan.

12 b. Defendants' combinations or conspiracies had the following
13 effects: (1) packaged seafood product price competition was restrained,
14 suppressed, and eliminated throughout Michigan; (2) packaged seafood
15 product prices were raised, fixed, maintained, and stabilized at artificially
16 high levels throughout Michigan; (3) Michigan Purchasers paid
17 supracompetitive, artificially inflated prices for packaged seafood products.

18 c. During the Class Period, Defendants' illegal conduct
19 substantially affected Michigan commerce.

20 d. As a direct and proximate result of Defendants' unlawful
21 conduct, Michigan Purchasers have been injured in their business and
22 property and are threatened with further injury.

23 e. By reason of the foregoing, Defendants have entered into
24 agreements in restraint of trade in violation of Michigan Comp. Laws Ann.
25 §§ 445.771 *et seq.* Accordingly, Michigan Purchasers seek all forms of relief
26 available under Michigan Comp. Laws Ann. §§ 445.771 *et seq.*

27 92. Plaintiff further alleges as follows:

28 a. Defendants agreed to, and did in fact, act in restraint of trade or
commerce by affecting, fixing, controlling and/or maintaining, at artificial

1 and/or non-competitive levels, the prices at which packaged seafood products
2 were sold, distributed or obtained in Minnesota.

3 b. Defendants' combinations or conspiracies had the following
4 effects: (1) packaged seafood product price competition was restrained,
5 suppressed, and eliminated throughout Minnesota; (2) packaged seafood
6 product prices were raised, fixed, maintained, and stabilized at artificially
7 high levels throughout Minnesota; (3) Minnesota Purchasers paid
8 supracompetitive, artificially inflated prices for packaged seafood products.

9 c. During the Class Period, Defendants' illegal conduct
10 substantially affected Minnesota commerce.

11 d. As a direct and proximate result of Defendants' unlawful
12 conduct, members of the Minnesota Purchasers have been injured in their
13 business and property and are threatened with further injury.

14 e. By reason of the foregoing, Defendants have entered into
15 agreements in restraint of trade in violation of Minnesota Stat. §§ 325D.50 *et*
16 *seq.*

17 93. Accordingly, Minnesota purchasers seek all forms of relief available
18 under Minnesota Stat. §§ 325D.50 *et seq.*

19 94. Plaintiff further alleges as follows:

20 a. Defendants agreed to, and did in fact, act in restraint of trade or
21 commerce by affecting, fixing, controlling and/or maintaining, at artificial
22 and/or non-competitive levels, the prices at which packaged seafood
23 products were sold, distributed or obtained in Mississippi.

24 b. Defendants' combinations or conspiracies had the following
25 effects: (1) packaged seafood product price competition was restrained,
26 suppressed, and eliminated throughout Mississippi; (2) packaged seafood
27 product prices were raised, fixed, maintained, and stabilized at artificially
28 high levels throughout Mississippi; (3) Mississippi Purchasers paid
supracompetitive, artificially inflated prices for packaged seafood products.

1 c. During the Class Period, Defendants' illegal conduct
2 substantially affected Mississippi commerce.

3 d. As a direct and proximate result of Defendants' unlawful
4 conduct, Mississippi Purchasers have been injured in their business and
5 property and are threatened with further injury.

6 e. By reason of the foregoing, Defendants have entered into
7 agreements in restraint of trade in violation of Mississippi Code Ann. §75-
8 21-1 *et seq.* Accordingly, Mississippi Purchasers seek all forms of relief
9 available under Mississippi Code Ann. §75-21-1 *et seq.*

10 95. Plaintiff further alleges as follows:

11 a. Defendants agreed to, and did in fact, act in restraint of trade or
12 commerce by affecting, fixing, controlling and/or maintaining, at artificial
13 and/or non-competitive levels, the prices at which packaged seafood
14 products were sold, distributed or obtained in Nevada.

15 b. Defendants' combinations or conspiracies had the following
16 effects: (1) packaged seafood product price competition was restrained,
17 suppressed, and eliminated throughout Nevada; (2) packaged seafood
18 product prices were raised, fixed, maintained, and stabilized at artificially
19 high levels throughout Nevada; (3) Nevada Purchasers paid
20 supracompetitive, artificially inflated prices for packaged seafood products.

21 c. During the Class Period, Defendants' illegal conduct
22 substantially affected Nevada commerce.

23 d. As a direct and proximate result of Defendants' unlawful
24 conduct, Nevada Purchasers have been injured in their business and property
25 and are threatened with further injury.

26 e. By reason of the foregoing, Defendants have entered into
27 agreements in restraint of trade in violation of Nevada Rev. Stat. Ann. §§
28 598A *et seq.*6 Accordingly, Nevada Purchasers seek all forms of relief
available under Nevada Rev. Stat. Ann. §§ 598A *et seq.*

1 96. In compliance with the Nevada Unfair Trade Practices Act, Nev. Rev.
2 Stat. Ann. § 598A.210(3), Plaintiff will mail a copy of this Complaint to the
3 Nevada Attorney General contemporaneously with its filing.

4 97. Plaintiff further alleges as follows:

5 a. Defendants agreed to, and did in fact, act in restraint of trade or
6 commerce by affecting, fixing, controlling and/or maintaining, at artificial
7 and/or non-competitive levels, the prices at which packaged seafood
8 products were sold, distributed or obtained in New Mexico.

9 b. Defendants' combinations or conspiracies had the following
10 effects: (1) packaged seafood product price competition was restrained,
11 suppressed, and eliminated throughout New Mexico; (2) packaged seafood
12 product prices were raised, fixed, maintained, and stabilized at artificially
13 high levels throughout New Mexico; (3) New Mexico Purchasers paid
14 supracompetitive, artificially inflated prices for packaged seafood products.

15 c. During the Class Period, Defendants' illegal conduct
16 substantially affected New Mexico commerce.

17 d. As a direct and proximate result of Defendants' unlawful
18 conduct, New Mexico Purchasers have been injured in their business and
19 property and are threatened with further injury.

20 e. By reason of the foregoing, Defendants have entered into
21 agreements in restraint of trade in violation of New Mexico Stat. Ann. §§
22 57-1-1 *et seq.* Accordingly, New Mexico Purchasers seek all forms of relief
23 available under New Mexico Stat. Ann. §§ 57-1-1 *et seq.*

24 98. Plaintiff further alleges as follows:

25 a. Defendants agreed to, and did in fact, act in restraint of trade or
26 commerce by affecting, fixing, controlling and/or maintaining, at artificial
27 and/or non-competitive levels, the prices at which packaged seafood
28 products were sold, distributed or obtained in New York.

 b. Defendants' combinations or conspiracies had the following

1 effects: (1) packaged seafood product price competition was restrained,
2 suppressed, and eliminated throughout New York; (2) packaged seafood
3 product prices were raised, fixed, maintained, and stabilized at artificially
4 high levels throughout New York; (3) New York Purchasers paid
5 supracompetitive, artificially inflated prices for packaged seafood products.

6 c. During the Class Period, Defendants' illegal conduct
7 substantially affected New York commerce.

8 d. As a direct and proximate result of Defendants' unlawful
9 conduct, New York Purchasers have been injured in their business and
10 property and are threatened with further injury.

11 e. By reason of the foregoing, Defendants have entered into
12 agreements in restraint of trade in violation of New York General Business
13 Law § 340 *et seq.* Accordingly, New York Purchasers seek all forms of
14 relief available under New York G.B.L. § 340 *et seq.*

15 99. In accordance with New York G.B.L. § 340.5, Plaintiff will mail a
16 copy of this Complaint to the New York Attorney General contemporaneously
17 with its filing.

18 100. Plaintiff further alleges as follows:

19 a. Defendants agreed to, and did in fact, act in restraint of trade or
20 commerce by affecting, fixing, controlling and/or maintaining, at artificial
21 and/or non-competitive levels, the prices at which packaged seafood
22 products were sold, distributed or obtained in North Carolina.

23 b. Defendants' combinations or conspiracies had the following
24 effects: (1) packaged seafood product price competition was restrained,
25 suppressed, and eliminated throughout North Carolina; (2) packaged seafood
26 product prices were raised, fixed, maintained, and stabilized at artificially
27 high levels throughout North Carolina; (3) North Carolina Purchasers paid
28 supracompetitive, artificially inflated prices for packaged seafood products.

c. During the Class Period, Defendants' illegal conduct

1 substantially affected North Carolina commerce.

2 d. As a direct and proximate result of Defendants' unlawful
3 conduct, North Carolina Purchasers have been injured in their business and
4 property and are threatened with further injury.

5 e. By reason of the foregoing, Defendants have entered into
6 agreements in restraint of trade in violation of North Carolina Gen. Stat. §§
7 75-1 *et seq.* Accordingly, North Carolina Purchasers seek all forms of relief
8 available under North Carolina Gen. Stat. §§ 75-1 *et seq.*

9 101. Plaintiff further alleges as follows:

10 a. Defendants agreed to, and did in fact, act in restraint of trade or
11 commerce by affecting, fixing, controlling and/or maintaining, at artificial
12 and/or non-competitive levels, the prices at which packaged seafood
13 products were sold, distributed or obtained in North Dakota.

14 b. Defendants' combinations or conspiracies had the following
15 effects: (1) packaged seafood product price competition was restrained,
16 suppressed, and eliminated throughout North Dakota; (2) packaged seafood
17 product prices were raised, fixed, maintained, and stabilized at artificially
18 high levels throughout North Dakota; (3) North Dakota Purchasers paid
19 supracompetitive, artificially inflated prices for packaged seafood products.

20 c. During the Class Period, Defendants' illegal conduct
21 substantially affected North Dakota commerce.

22 d. As a direct and proximate result of Defendants' unlawful
23 conduct, North Dakota Purchasers have been injured in their business and
24 property and are threatened with further injury.

25 e. By reason of the foregoing, Defendants have entered into
26 agreements in restraint of trade in violation of North Dakota Cent. Code §§
27 51-08.1-01 *et seq.* Accordingly, North Dakota Purchasers seek all forms of
28 relief available under North Dakota Cent. Code §§ 51-08.1-01 *et seq.*

102. Plaintiff further alleges as follows:

1 a. Defendants agreed to, and did in fact, act in restraint of trade or
2 commerce by affecting, fixing, controlling and/or maintaining, at artificial
3 and/or non-competitive levels, the prices at which packaged seafood
4 products were sold, distributed or obtained in South Dakota.

5 b. Defendants' combinations or conspiracies had the following
6 effects: (1) packaged seafood product price competition was restrained,
7 suppressed, and eliminated throughout South Dakota; (2) packaged seafood
8 product prices were raised, fixed, maintained, and stabilized at artificially
9 high levels throughout South Dakota; (3) South Dakota Purchasers paid
10 supracompetitive, artificially inflated prices for packaged seafood products.

11 c. During the Class Period, Defendants' illegal conduct
12 substantially affected South Dakota commerce.

13 d. As a direct and proximate result of Defendants' unlawful
14 conduct, South Dakota Purchasers have been injured in their business and
15 property and are threatened with further injury.

16 e. By reason of the foregoing, Defendants have entered into
17 agreements in restraint of trade in violation of South Dakota Codified Laws
18 Ann. §§ 37-1 *et seq.* Accordingly, South Dakota Purchasers seek all forms of
19 relief available under South Dakota Codified Laws Ann. §§ 37-1 *et seq.*
20 103. Plaintiff further alleges as follows:

21 a. Defendants agreed to, and did in fact, act in restraint of trade or
22 commerce by affecting, fixing, controlling and/or maintaining, at artificial
23 and/or non-competitive levels, the prices at which packaged seafood
24 products were sold, distributed or obtained in Tennessee.

25 b. Defendants' combinations or conspiracies had the following
26 effects: (1) packaged seafood product price competition was restrained,
27 suppressed, and eliminated throughout Tennessee; (2) packaged seafood
28 product prices were raised, fixed, maintained, and stabilized at artificially
high levels throughout Tennessee; (3) Tennessee Purchasers paid

1 supracompetitive, artificially inflated prices for packaged seafood products.

2 c. During the Class Period, Defendants' illegal conduct
3 substantially affected Tennessee commerce.

4 d. As a direct and proximate result of Defendants' unlawful
5 conduct, Tennessee Purchasers have been injured in their business and
6 property and are threatened with further injury.

7 e. By reason of the foregoing, Defendants have entered into
8 agreements in restraint of trade in violation of Tennessee Code Ann. §§ 47-
9 25-101 *et seq.* Accordingly, Tennessee Purchasers seek all forms of relief
10 available under Tennessee Code Ann. §§ 47-25-101 *et seq.*

11 104. Plaintiff further alleges as follows:

12 a. Defendants agreed to, and did in fact, act in restraint of trade or
13 commerce by affecting, fixing, controlling and/or maintaining, at artificial
14 and/or non-competitive levels, the prices at which packaged seafood
15 products were sold, distributed or obtained in Vermont.

16 b. Defendants' combinations or conspiracies had the following
17 effects: (1) packaged seafood product price competition was restrained,
18 suppressed, and eliminated throughout Vermont; (2) packaged seafood
19 product prices were raised, fixed, maintained, and stabilized at artificially
20 high levels throughout Vermont; (3) Vermont Purchasers paid
21 supracompetitive, artificially inflated prices for packaged seafood products.

22 c. During the Class Period, Defendants' illegal conduct
23 substantially affected Vermont commerce.

24 d. As a direct and proximate result of Defendants' unlawful
25 conduct, Vermont Purchasers have been injured in their business and
26 property and are threatened with further injury.

27 e. By reason of the foregoing, Defendants have entered into
28 agreements in restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453
29 *et seq.* Accordingly, Vermont Purchasers seek all forms of relief available

1 under Vermont Stat. Ann. 9 §§ 2453 *et seq.*

2 105. Plaintiff further alleges as follows:

3 a. Defendants agreed to, and did in fact, act in restraint of trade or
4 commerce by affecting, fixing, controlling and/or maintaining, at artificial
5 and/or non-competitive levels, the prices at which packaged seafood
6 products were sold, distributed or obtained in West Virginia.

7 b. Defendants' combinations or conspiracies had the following
8 effects: (1) packaged seafood product price competition was restrained,
9 suppressed, and eliminated throughout West Virginia; (2) packaged seafood
10 product prices were raised, fixed, maintained, and stabilized at artificially
11 high levels throughout West Virginia; (3) West Virginia Purchasers paid
12 supracompetitive, artificially inflated prices for packaged seafood products.

13 c. During the Class Period, Defendants' illegal conduct
14 substantially affected West Virginia commerce.

15 d. As a direct and proximate result of Defendants' unlawful
16 conduct, West Virginia Purchasers have been injured in their business and
17 property and are threatened with further injury.

18 e. By reason of the foregoing, Defendants have entered into
19 agreements in restraint of trade in violation of West Virginia Code §§ 47-18-
20 1 *et seq.* Accordingly, West Virginia Purchasers seek all forms of relief
21 available under West Virginia Code §§ 47-18-1 *et seq.*

22 106. Plaintiff further alleges as follows:

23 a. Defendants agreed to, and did in fact, act in restraint of trade or
24 commerce by affecting, fixing, controlling and/or maintaining, at artificial
25 and/or non-competitive levels, the prices at which packaged seafood
26 products were sold, distributed or obtained in Wisconsin.

27 b. Defendants' combinations or conspiracies had the following
28 effects: (1) packaged seafood product price competition was restrained,
suppressed, and eliminated throughout Wisconsin; (2) packaged seafood

1 product prices were raised, fixed, maintained, and stabilized at artificially
 2 high levels throughout Wisconsin; (3) Wisconsin Purchasers paid
 3 supracompetitive, artificially inflated prices for packaged seafood products.

4 c. During the Class Period, Defendants' illegal conduct
 5 substantially affected Wisconsin commerce.

6 d. As a direct and proximate result of Defendants' unlawful
 7 conduct, Wisconsin Purchasers have been injured in their business and
 8 property and are threatened with further injury.

9 e. By reason of the foregoing, Defendants have entered into
 10 agreements in restraint of trade in violation of Wisconsin Stat. §§133.01 *et*
 11 *seq.*

12 107. Accordingly, Wisconsin Purchasers seek all forms of relief available
 13 under Wisconsin Stat. §§133.01 *et seq.*

14 **COUNT III**

15 **State Consumer Protection and Unfair Competition Statutes**

16 108. Plaintiff incorporates by reference the preceding paragraphs as if fully
 17 set forth herein.

18 109. Plaintiff further alleges as follows:

19 a. Beginning on a date unknown to Plaintiff, but at least as early
 20 as January 1, 2005, and continuing thereafter to the present, Defendants
 21 committed and continue to commit acts of unfair competition, as defined by
 22 Sections 17200, *et seq.* of the California Business and Professions Code, by
 engaging in the acts and practices specified above.

23 b. This claim is instituted pursuant to Sections 17203 and 17204
 24 of the California Business and Professions Code, to obtain restitution from
 25 these Defendants for acts, as alleged herein, that violated Section 17200 of
 26 the California Business and Professions Code, commonly known as the
 27 Unfair Competition Law.

28 c. The Defendants' conduct as alleged herein violated Section

1 17200. The acts, omissions, misrepresentations, practices and non-
2 disclosures of Defendants, as alleged herein, constituted a common
3 continuous and continuing course of conduct of unfair competition by means
4 of unfair, unlawful and/or fraudulent business acts or practices within the
5 meaning of California Business and Professions Code, Section 17200, *et*
6 *seq.*, including, but not limited to, the following: (1) the violations of Section
7 1 of the Sherman Act, as set forth above; (2) the violations of Section 16720,
8 *et seq.*, of the California Business and Professions Code, set forth above;

9 d. Defendants' acts, omissions, misrepresentations, practices and
10 nondisclosures, as described above, whether or not in violation of Section
11 16720, *et seq.* of the California Business and Professions Code, and whether
12 or not concerted or independent acts, are otherwise unfair, unconscionable,
13 unlawful or fraudulent; Defendants' act and practices are unfair to
14 consumers of packaged seafood products in the State of California and
15 throughout the United States, within the meaning of Section 17200,
16 California Business and Professions Code; and e. Defendants' acts and
17 practices are fraudulent or deceptive within the meaning of Section 17200 of
18 the California Business and Professions Code.

19 e. California Plaintiff and each of the California Purchasers
20 members are entitled to full restitution and/or disgorgement of all revenues,
21 earnings, profits, compensation, and benefits that may have been obtained by
22 Defendants as a result of such business acts or practices.

23 f. The illegal conduct alleged herein is continuing and there is no
24 indication that Defendants will not continue such activity into the future.

25 g. The unlawful and unfair business practices of Defendants, and
26 each of them, as described above, have caused and continue to cause
27 Plaintiff and California Purchasers to pay supra-competitive and artificially-
28 inflated prices for packaged seafood products. Plaintiff and California
Purchasers suffered injury in fact and lost money or property as a result of

1 such unfair competition.

2 h. The conduct of Defendants as alleged in this Complaint violates
3 Section 17200 of the California Business and Professions Code.

4 i. As alleged in this Complaint, Defendants and their co-
5 conspirators have been unjustly enriched as a result of their wrongful
6 conduct and by Defendants' unfair competition.

7 j. Plaintiff and the California Purchasers are accordingly entitled
8 to equitable relief including restitution and/or disgorgement of all revenues,
9 earnings, profits, compensation and benefits which may have been obtained
10 by Defendants as a result of such business practices, pursuant to California
11 Business & Professions Code §17200 *et seq.*

110. Plaintiff further alleges as follows:

12 a. Defendants agreed to, and did in fact, act in restraint of trade or
13 commerce by affecting, fixing, controlling and/or maintaining, at artificial
14 and/or non-competitive levels, the prices at which packaged seafood products
15 were sold, distributed or obtained in Florida.

16 b. The foregoing conduct constitutes "unfair methods of
17 competition," and "unfair or deceptive acts or practices in the conduct of any
18 trade or commerce" within the meaning of Florida Stat. § 501.204.

19 c. During the Class Period, Defendants' illegal conduct
20 substantially affected Florida commerce and consumers.

21 d. Defendants' unlawful conduct had the following effects: (1)
22 packaged seafood product price competition was restrained, suppressed, and
23 eliminated throughout Florida; (2) packaged seafood product prices were
24 raised, fixed, maintained and stabilized at artificially high levels throughout
25 Florida; (3) Florida Purchasers were deprived of free and open competition;
26 and (4) Florida Purchasers paid supracompetitive, artificially inflated prices
27 for packaged seafood products.

28 e. As a direct and proximate result of Defendants' conduct,

1 Florida Purchasers have been injured and are threatened with further injury.

2 f. Defendants have engaged in unfair competition or unfair or
3 deceptive acts or practices in violation of Florida Stat. § 501.201 *et seq.*, and
4 accordingly, Florida Purchasers seek all relief available under that statute.

5 111. Plaintiff further alleges as follows:

6 a. Defendants agreed to, and did in fact, act in restraint of trade or
7 commerce by affecting, fixing, controlling and/or maintaining, at artificial
8 and/or non-competitive levels, the prices at which packaged seafood
9 products were sold, distributed or obtained in Hawaii.

10 b. The foregoing conduct constitutes “unfair methods of
11 competition and unfair or deceptive acts or practices in the conduct of any
12 trade or commerce” within the meaning of Hawaii Rev. Stat. § 480-2.

13 c. During the Class Period, Defendants’ illegal conduct
14 substantially affected Hawaii commerce and consumers.

15 d. Defendants’ unlawful conduct had the following effects: (1)
16 packaged seafood product price competition was restrained, suppressed, and
17 eliminated throughout Hawaii; (2) packaged seafood product prices were
18 raised, fixed, maintained and stabilized at artificially high levels throughout
19 Hawaii; (3) Hawaii Purchasers were deprived of free and open competition;
20 and (4) Hawaii Purchasers paid supracompetitive, artificially inflated prices
21 for packaged seafood products.

22 e. As a direct and proximate result of Defendants’ conduct,
23 Hawaii Purchasers have been injured and are threatened with further injury.

24 f. Defendants have engaged in unfair competition or unfair or
25 deceptive acts or practices in violation of Hawaii Rev. Stat. § 480-2.
26 Accordingly, Hawaii Purchasers seek all relief available under Hawaii Rev
27 Stat. § 480 *et seq.*

28 112. Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or

1 commerce by affecting, fixing, controlling and/or maintaining, at artificial
2 and/or non-competitive levels, the prices at which packaged seafood
3 products were sold, distributed or obtained in Nebraska.

4 b. The foregoing conduct constitutes “unfair methods of
5 competition and unfair or deceptive acts or practices in the conduct of any
6 trade or commerce” within the meaning of Neb. Rev. Stat. § 59-1602.

7 c. During the Class Period, Defendants’ illegal conduct
8 substantially affected Nebraska commerce and consumers.

9 d. Defendants’ unlawful conduct had the following effects: (1)
10 packaged seafood product price competition was restrained, suppressed, and
11 eliminated throughout Nebraska; (2) packaged seafood product prices were
12 raised, fixed, maintained and stabilized at artificially high levels throughout
13 Nebraska; (3) Nebraska Purchasers were deprived of free and open
14 competition; and (4) Nebraska Purchasers paid supracompetitive, artificially
15 inflated prices for packaged seafood products.

16 e. As a direct and proximate result of Defendants’ conduct,
17 Nebraska Purchasers have been injured and are threatened with further
18 injury.

19 f. Defendants have engaged in unfair competition or unfair or
20 deceptive acts or practices in violation of Neb. Rev. Stat. §§ 59-1601 *et seq.*,
21 and accordingly, Nebraska Purchasers seek all relief available under that
22 statute.

23 113. Plaintiff further alleges as follows:

24 a. Defendants agreed to, and did in fact, act in restraint of trade or
25 commerce by affecting, fixing, controlling and/or maintaining, at artificial
26 and/or non-competitive levels, the prices at which packaged seafood
27 products were sold, distributed or obtained in New Mexico.

28 b. Defendants also took efforts to conceal their agreements from
New Mexico Purchasers.

1 c. The foregoing conduct constitutes “unfair or deceptive trade
2 practices” and “unconscionable trade practices in the conduct of any trade or
3 commerce” within the meaning of New Mexico Stat. § 57-12-3, in that such
4 conduct resulted in a gross disparity between the value received by New
5 Mexico Purchasers and the prices paid by them for packaged seafood
6 products as set forth in New Mexico Stat. § 57-12-2E.

7 d. During the Class Period, Defendants’ illegal conduct
8 substantially affected New Mexico commerce and consumers.

9 e. Defendants’ unlawful conduct had the following effects: (1)
10 packaged seafood product price competition was restrained, suppressed, and
11 eliminated throughout New Mexico; (2) packaged seafood product prices
12 were raised, fixed, maintained and stabilized at artificially high levels
13 throughout New Mexico; (3) New Mexico Purchasers were deprived of free
14 and open competition; and (4) New Mexico Purchasers paid
15 supracompetitive, artificially inflated prices for packaged seafood products.

16 f. As a direct and proximate result of Defendants’ conduct, New
17 Mexico Purchasers have been injured and are threatened with further injury.

18 g. Defendants have engaged in unfair competition or unfair or
19 deceptive acts or practices in violation of New Mexico Stat. § 57-12-1 *et*
20 *seq.*, and accordingly, New Mexico Purchasers seek all relief available under
21 that statute.

22 114. Plaintiff further alleges as follows:

23 a. Defendants agreed to, and did in fact, act in restraint of trade or
24 commerce by affecting, fixing, controlling and/or maintaining, at artificial
25 and/or non-competitive levels, the prices at which packaged seafood
26 products were sold, distributed or obtained in New York.

27 b. Defendants also took efforts to conceal their agreements from
28 New York Purchasers.

 c. Defendants’ illegal conduct substantially affected New York

1 commerce and consumers.

2 d. The conduct of Defendants as described herein constitutes
3 consumer-oriented deceptive acts or practices within the meaning of N.Y.
4 Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse
5 impact on the public at large, and harmed the public interest of New York
6 State in an honest marketplace in which economic activity is conducted in a
7 competitive manner.

8 e. As consumers, New York Purchasers were targets of the
9 conspiracy.

10 f. Defendants' secret agreements as described herein were not
11 known to members New York Purchasers.

12 g. Defendants made public statements about the price of packaged
13 seafood products that Defendants knew would be seen by New York
14 Purchasers; such statements either omitted material information that
15 rendered these statements that they made materially misleading or
16 affirmatively misrepresented the real cause of price increases for packaged
17 seafood products; and, Defendants alone possessed material information that
18 was relevant to consumers, but failed to provide the information.

19 h. Because of Defendants' unlawful trade practices in the State of
20 New York, there was a broad impact on New York Purchasers who
21 indirectly purchased packaged seafood products.

22 115. Plaintiff further alleges as follows:

23 a. Defendants agreed to, and did in fact, act in restraint of trade or
24 commerce by affecting, fixing, controlling and/or maintaining, at artificial
25 and/or non-competitive levels, the prices at which packaged seafood products
26 were sold, distributed or obtained in North Carolina.

27 b. Defendants also took efforts to conceal their agreements from
28 North Carolina Purchasers.

c. The conduct of Defendants as described herein constitutes

1 consumer-oriented deceptive acts or practices within the meaning of North
2 Carolina Gen. Stat. §75-1.1 *et seq.*, which resulted in consumer injury and
3 broad adverse impact on the public at large, and harmed the public interest of
4 North Carolina consumers in an honest marketplace in which economic
5 activity is conducted in a competitive manner.

6 d. During the Class Period, Defendants' illegal conduct
7 substantially affected North Carolina commerce and consumers.

8 e. Defendants' unlawful conduct had the following effects: (1)
9 packaged seafood product price competition was restrained, suppressed, and
10 eliminated throughout North Carolina; (2) packaged seafood product prices
11 were raised, fixed, maintained and stabilized at artificially high levels
12 throughout North Carolina; (3) North Carolina Purchasers were deprived of
13 free and open competition; and (4) North Carolina Purchasers paid
14 supracompetitive, artificially inflated prices for packaged seafood products.

15 f. As a direct and proximate result of Defendants' conduct, North
16 Carolina Purchasers have been injured and are threatened with further injury.

17 g. During the Class Period, each of the Defendants named herein,
18 directly or indirectly through affiliates they dominated and controlled,
19 manufactured, sold and/or distributed packaged seafood products in North
20 Carolina.

21 h. Defendants have engaged in unfair competition or unfair or
22 deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1
23 *et seq.*, and accordingly, North Carolina Purchasers seek all relief available
24 under that statute.

25 116. Plaintiff further alleges as follows:

26 a. Defendants agreed to, and did in fact, act in restraint of trade or
27 commerce by affecting, fixing, controlling and/or maintaining, at artificial
28 and/or non-competitive levels, the prices at which packaged seafood
products were sold, distributed or obtained in Vermont.

1 b. Defendants deliberately failed to disclose material facts to
2 Vermont Purchasers concerning Defendants' unlawful activities and
3 artificially inflated prices for packaged seafood products. Defendants owed a
4 duty to disclose such facts, and considering the relative lack of
5 sophistication of the average, non-business consumer, Defendants breached
6 that duty by their silence. Defendants misrepresented to all consumers
7 during the Class Period that Defendants packaged seafood product prices
8 were competitive and fair.

9 c. Because of Defendants' unlawful and unscrupulous trade
10 practices in Vermont, Vermont Purchasers who indirectly purchased
11 packaged seafood products were misled or deceived to believe that they
12 were paying a fair price for packaged seafood products or that the price
13 increases for packaged seafood products were for valid business reasons.

14 d. Defendants' unlawful conduct had the following effects: (1)
15 packaged seafood product price competition was restrained, suppressed, and
16 eliminated throughout Vermont; (2) packaged seafood product prices were
17 raised, fixed, maintained and stabilized at artificially high levels throughout
18 Vermont; (3) Vermont Purchasers were deprived of free and open
19 competition; and (4) Vermont Purchasers paid supracompetitive, artificially
20 inflated prices for packaged seafood products.

21 e. As a direct and proximate result of Defendants' illegal conduct,
22 Vermont Purchasers suffered an ascertainable loss of money or property as a
23 result of Defendants' use or employment of unconscionable and deceptive
24 commercial practices as set forth above. That loss was caused by
25 Defendants' willful and deceptive conduct, as described herein.

26 f. Defendants' misleading conduct and unconscionable activities
27 constitutes unfair competition or unfair or deceptive acts or practices in
28 violation of Vermont Stat. Ann. Title 9, § 2451 *et seq.*, and accordingly,
Vermont Purchasers seek all relief available under that statute.

COUNT IV

Unjust Enrichment and Disgorgement of Profits

117. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

118. Defendants have been unjustly enriched through overpayments by Plaintiff and the Class members and the resulting profits.

119. Under common law principles of unjust enrichment, Defendants should not be permitted to retain the benefits conferred via overpayments by class members in the following states: Arizona, California, District of Columbia, Iowa, Maine, Michigan, New Mexico and South Dakota.

120. Plaintiff and the class members in each of the states listed above seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and the Class members may seek restitution.

PRAYER FOR RELIEF

121. WHEREFORE, Plaintiff prays:

A. That the Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to members of the Classes;

B. That the Court adjudge and decree that the contract, combination and conspiracy alleged herein is a per se unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

C. That the Court enter judgment against Defendants, jointly and severally, in favor of Plaintiff and the Classes;

D. That the Court award Plaintiff and the Classes treble damages;

E. That the Court award Plaintiff and the Classes attorneys' fees and costs as well as pre-judgment and post-judgment interest as permitted by law;

F. That Defendants and their co-conspirators, their respective successors,

1 assigns, parents, subsidiaries, affiliates and transferees, and their respective
2 officers, directors, agents and employees, and all other persons acting or claiming
3 to act on behalf of Defendants or their co-conspirators, or in concert with them, be
4 permanently enjoined and restrained from, in any manner, directly or indirectly,
5 continuing, maintaining or renewing the combination, conspiracy, agreement,
6 understanding or concert of action, or adopting any practice, plan, program or
7 design having a similar purpose or affect in restraining competition; and

8 G. That the Court award Plaintiff and the Class members such other and
9 further relief as may be deemed necessary and appropriate.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff requests a jury trial on all matters so triable.

12 DATED: September 10, 2015

Respectfully submitted,

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